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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 13th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Tuesday, 23 June 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT, IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.9)

Part 2 of the draft Statute (*continued*)

Article 20 (*continued*)

1. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said that her delegation accepted all three paragraphs of article 20 and preferred option 2 for paragraph 1 (c).

2. **Ms. WILMSHURST** (United Kingdom) said that her delegation preferred option 1 for paragraph 1 (c). Paragraph 3 could perhaps be shortened: it could end with the words "human rights" in the second line.

3. **Mr. SHARIAT BAGHERI** (Islamic Republic of Iran) said that his delegation supported the proposal made at the last meeting by the representative of Syria to replace the words "general international law" in paragraph 1 (b) by "public international law". The phrase in square brackets should be deleted. Option 2 for paragraph 1 (c) was to be preferred. Paragraph 2 was acceptable. With regard to paragraph 3, in view of the differences between the various legal systems as far as the concept of human rights was concerned, it might be better to speak of human rights norms recognized by the international community or recognized by the main legal systems.

4. **Mr. MANSOUR** (Tunisia) thought that article 20 should be retained in its entirety and the square brackets deleted. Option 2 for paragraph 1 (c) was preferable to option 1.

5. **Mr. ONKELINX** (Belgium) said that his delegation could accept article 20 with option 1 for paragraph 1, subparagraph (c). Option 2 established a hierarchy among national laws which was out of place in view of developments in international law. With option 1, some textual alignment might be necessary between subparagraphs (b) and (c).

6. **Mr. SKIBSTED** (Denmark) said that his delegation could accept subparagraphs (a) and (b) of paragraph 1, including the bracketed portion, and preferred option 1 for subparagraph (c), including the bracketed portion. In view of the point made in footnote 63 in document A/CONF.183/2/Add.1 regarding the principle of *nullum crimen sine lege*, Denmark considered that general principles derived from the various legal systems should be drawn upon only to fill any potential lacunae in the Statute, in treaties and in customary international law.

7. **Mr. JANDA** (Czech Republic) said that his delegation could accept article 20 with the deletion of the phrase in square brackets in paragraph 1 (b) and with option 1 for paragraph 1 (c), including the bracketed text.

8. **Mr. OUMAR MAIGA** (Mali) said that his delegation could support article 20 with the deletion of the bracketed phrase in paragraph 1 (b) and with option 1 for paragraph 1 (c), with the deletion of the bracketed text.

9. **Mr. GEVORGIAN** (Russian Federation) said that his delegation was in favour of subparagraph (a) of paragraph 1 and agreed with the Mexican delegation that the words "if necessary" in subparagraph (b) should be deleted. The words in square brackets in that subparagraph were superfluous, but his delegation would not insist

on their deletion. It had a clear preference for option 1 for subparagraph (c), and supported the proposal by the United Kingdom that paragraph 3 should end with the words "human rights".

10. **Mr. YEPEZ MARTINEZ** (Venezuela) said that the words "in the first place" should be deleted from subparagraph (a) of paragraph 1 and the words "if necessary" should be deleted from subparagraph (b). The phrase in square brackets in subparagraph (b) should be retained, but explicit reference should be made to international humanitarian law. Option 1 for subparagraph (c), without the phrase in square brackets, was preferable to option 2. Paragraph 2 was necessary because it would enable the Court to take into account previous decisions, but more precise wording would be preferable.

11. **Mr. BARTON** (Slovakia) said that his delegation supported article 20 with option 1 for paragraph 1 (c).

12. **Mr. ABOLY** (Guinea) said that, if subparagraph (b) of paragraph 1 were to be amended by the deletion of the words "if necessary", the words "in the first place" in subparagraph (a) should also be deleted. Subparagraph (b) might be amended to read: "applicable treaties and the principles and rules of international humanitarian law", the phrase in square brackets being deleted. His delegation was in favour of option 1 for subparagraph (c) with the deletion of the words in square brackets.

13. **Mr. Khalid B. ' Ali Abdullah AL-KHALIFA** (Bahrain) said that his delegation supported article 20 in general and agreed with other delegations that the phrase in square brackets in subparagraph (b) of paragraph 1 should be deleted. It preferred option 2 for subparagraph (c).

14. **Ms. KAMALUDIN** (Brunei Darussalam) said that her delegation supported article 20 generally. The words "if necessary" in subparagraph (b) of paragraph 1 should be retained and the phrase in square brackets deleted. She preferred option 1 for subparagraph (c) with the deletion of the words in square brackets.

15. **Mr. SIMPSON** (Australia) said that his delegation supported paragraph 1, subparagraph (a), and was open-minded about the inclusion of the phrase in square brackets in subparagraph (b). It supported option 1 for subparagraph (c) and was flexible about the words in square brackets. Paragraphs 2 and 3 were acceptable as they stood.

16. **Mr. HOLMES** (Canada) said that his delegation supported subparagraphs (a) and (b) of paragraph 1 and had no strong position on the inclusion or otherwise of the text in square brackets. It favoured option 1 for subparagraph (c) with the retention of the words in square brackets. Paragraphs 2 and 3 should remain as drafted.

17. **Mr. SAENZ DE TEJADA** (Guatemala) said that his delegation supported article 20. The phrase in square brackets in paragraph 1, subparagraph (b), was unnecessary but could be accepted. Option 1 for subparagraph (c) was preferable to option 2.

18. **Mr. AL HAFIZ** (Saudi Arabia) said that his delegation would prefer the deletion of the phrase in square brackets in paragraph 1, subparagraph (b), and the replacement of the words "general international law" by "international humanitarian law". It preferred option 2 for subparagraph (c).

19. **Mr. SADI** (Jordan) said that his delegation had no objection in principle to option 1 for paragraph 1 (c) but would prefer simpler wording, such as: "failing that, national laws only in so far as they are consistent with the objectives and the purpose of this Statute".

The meeting rose at 3.30 p.m.